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IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1925.

No. 16 ORIGINAL IN EQUITY.

STATES OF WISCONSIN, OHIO, PENNSYLVANIA AND MINNESOTA,
Complainants,

vs.

STATE OF ILLINOIS AND THE SANITARY DISTRICT OF CHICAGO,
Defendants.

STATES OF MISSOURI, KENTUCKY, TENNESSEE AND LOUISIANA,
Intervening Defendants.

PETITION OR MOTION OF THE STATE OF ARKANSAS BY WILLIAM B. APPLEGATE, ITS ATTORNEY GENERAL, FOR LEAVE TO INTERVENE AND BECOME A PARTY DEFENDANT AND ADOPT THE ANSWER HERETOFORE FILED BY THE ABOVE NAMED INTERVENING DEFENDANTS.

STATE OF ARKANSAS,
By WILLIAM B. APPLEGATE,
N.W. *Its Attorney General.*
DANIEL N. KIRBY,
CORNELIUS LYNDE,
Solicitors for the State of Arkansas.

BUNTHORP-WARREN PRINTING COMPANY, CHICAGO.

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The State of Arkansas by William B. Applegate, its Attorney General, respectfully states that:

1. He is the Attorney General of the State of Arkansas, duly authorized to appear in any proceeding or tribunal in which the interests of said state are involved, —and on behalf of said state respectfully presents this

petition for leave to the State of Arkansas to intervene in the above entitled cause and become a defendant therein, and to join in and adopt as the answer of the State of Arkansas, the answer heretofore filed by the intervening defendants, States of Missouri, Kentucky, Tennessee and Louisiana.

2. Said cause is a suit in equity wherein the States of Wisconsin, Minnesota, Ohio and Pennsylvania, as joint complainants against the State of Illinois and The Sanitary District of Chicago, as defendants, seek to invoke the jurisdiction of this Honorable Court for the purposes:

(a) Of enjoining the last named defendants from diverting any water whatever from Lake Michigan into the "Lakes-To-The-Gulf" Waterway, which waterway consists of the Chicago River from Lake Michigan, the Sanitary and Ship Canal of the Sanitary District of Chicago, connecting the Chicago River with the Desplaines River, and the Desplaines and Illinois and Mississippi Rivers.

(b) Of asking this Honorable Court to usurp the powers and functions that this court has held to be vested in the Secretary of War, acting upon the recommendation of the Chief of Engineers, in respect of the navigable waters of the United States, by determining and decreeing in this case what quantity of water to be diverted from Lake Michigan, "is reasonably required for the purpose of navigation" in said "Lakes-To-The-Gulf" Waterway; and by enjoining all such diversion of water in excess of the quantity so to be determined by this Honorable Court.

(c) Of asking this Honorable Court, by its decree herein, to exercise control over the navigable condition of said waterway; and by enjoining the injection into

the Chicago, Desplaines and Illinois Rivers of such sewage or waste as would interfere with navigation on said rivers, and to do so at the request of the complainant states, none of which is located upon or below the said rivers alleged to be so polluted.

3. The State of Arkansas is located in the Mississippi Valley with its eastern boundary along the banks of the Mississippi River, and said state and the people thereof are respectively interested in the subject matter of said cause, and would be prejudiced by the granting of the relief therein prayed by complainants in respect of the diversion of water from Lake Michigan into the "Lakes-To-The-Gulf" Waterway, a navigable water of the United States.

4. The State of Arkansas and its inhabitants are interested in the subject matter and issues of said cause: first, in respect to the navigability of the Illinois waterway, and the rendering of the same available for the transportation of the products of the State of Arkansas and of those things which must be brought into the state for consumption therein; second, in respect of the preservation of the navigability of the Mississippi Waterway from Grafton, the mouth of the Illinois River, south, to which waterway the water diverted from Lake Michigan is essential for the maintenance of adequate navigation depths; third, in respect of the continued maintenance of conditions which will render practicable and feasible, the continued operation on said Mississippi River of the Mississippi-Warrior Barge Line, now operated by the Inland Waterways Corporation, an agency of the Government of the United States; and fourth, in respect of the continued maintenance of favorable railroad rates for the movement out of the State of Arkansas of the

products of said state and of other products into said state to be therein consumed, the continuance of which favorable rates are dependent upon the continuance of water transportation furnished by the Inland Waterways Corporation and the waterways above referred to.

5. There are many individuals, partnerships and corporations residing and located within the State of Arkansas, and doing business at various points in the Mississippi Valley, who have developed their respective businesses and industries and have heretofore conducted the same, and are now conducting the same, through the use of the facilities for transportation now afforded by the "Lakes-To-The-Gulf" Waterway, and relying upon the assumption that the navigable channel that has for many years constituted the public highway or water route on the Mississippi River from Cairo, Illinois and St. Louis, Missouri, would forever be maintained as a navigable water route with an adequate flow of water sufficient to meet the constantly growing needs of common carriers by water, and shippers and receivers of freight transported upon said waterway between Cairo and St. Louis on the north and New Orleans and other points of origin and distribution on the south.

6. The State of Arkansas is informed and believes, and upon information and belief avers the fact to be, and prays the opportunity to offer evidence in support of this averment, that for many years last past the water diverted as aforesaid from Lake Michigan through the said "Lakes-To-The-Gulf" Waterway into the Mississippi, has constituted and now constitutes more than one-fourth of the low water volume in the Mississippi River at St. Louis, and if such diversion be discontinued or materially decreased there are many points in the Mississippi River between St. Louis and as far south as

Vicksburg, Mississippi, where the low water navigable depths would be thereby reduced in amounts varying from at least one foot at Vicksburg to 2½ to 3 feet at St. Louis; that any material reduction in said diversion of water, as aforesaid, would interfere with navigation over the "Lakes-To-The-Gulf" Waterway, and at considerable periods of the year would entirely prevent the same to any commercial extent.

The State of Arkansas avers that the relief sought by the complainants in the above entitled cause to prevent said diversion of water, would operate to the great and material injury of the State of Iowa and its citizens, as aforesaid.

7. The development and maintenance of this waterway from Lake Michigan to the Gulf of Mexico has long been a subject of public consideration, and of great public importance to the United States, particularly to the states and their peoples in and tributary to the Mississippi Valley, whose commerce is served by it.

By the Federal Control Act of Congress (40 Stat. L. 451), the President of the United States was authorized to spend such amounts as he deemed necessary for the utilization of waterways and the creation of water transportation agencies, and the policy of the Congress to engage in inland water transportation services and facilities, was declared in Sections 201 and 500 of the Transportation Act of 1920 (41 Stat. L. 449) and by Section 201 of said Act the Federal facilities for such transportation, acquired pursuant to the Federal Control Act, were transferred to the Secretary of War, who was authorized and directed to operate the same. That these facilities became, under the operation of the Secretary of War the Barge Line Freight Service on the Mississippi River from St. Louis to New Orleans, and on the

Black Warrior River in Alabama known as the Mississippi-Warrior Barge Line; that this service was subsequently taken over by the Inland Waterways Corporation, organized pursuant to an Act of Congress entitled, "An Act to Create the Inland Waterways Corporation for the purpose of Carrying out the Mandate and Purpose of Congress as Expressed in Sections 201 and 500 of the Transportation Act, and for other purposes," approved June 3, 1924. That the Secretary of War is charged with many duties in connection with the waterways of the United States, their development, preservation, maintenance and regulation, and is particularly authorized by the provisions of Section 10 of the Rivers and Harbors Act of March 3, 1899, upon recommendation of the Chief of Engineers to authorize and permit the alteration of the course, location, condition or capacity of any of the navigable waterways of the United States, and that pursuant to such authority, upon recommendation of the Chief of Engineers, the Secretary of War, on March 3, 1925, authorized and permitted, by a permit or order referred to in the amended bill of complaint herein, the diversion of water from Lake Michigan, in the amount therein specified, by the defendant, The Sanitary District of Chicago.

And the State of Arkansas avers that the amount of water authorized, as aforesaid, and now diverted, pursuant to such authorization into said Mississippi Waterway System, is vital and essential to the continuance in said Mississippi River of such conditions as are adequate for and reasonably required and essential to the maintenance of navigation thereon.

8. The State of Arkansas is advised that its presence as a party defendant would be proper; that it pos-

sesses in the premises legal rights which are entitled to the consideration of this Honorable Court, in that it will be materially injured and damaged if the relief prayed in the amended bill of complaint as aforesaid, be granted, and states that if it be permitted to intervene as a defendant it will adopt the answer heretofore filed by the intervening Mississippi Valley states of Missouri, Kentucky, Tenessee and Louisiana, for which it asks the permission of this Honorable Court, and will produce and offer evidence to sustain the averments herein contained.

WHEREFORE, this petitioner prays this Honorable Court to grant leave to petitioner to file this its petition for leave to intervene as a party defendant to said cause, and for an order making it a defendant therein, and for leave to join in and adopt as its answer to the amended bill of complaint herein, the answer heretofore filed by the States of Missouri, Kentucky, Tennessee and Louisiana, and for leave thereafter to participate in the defense of said cause as it may be advised; and for such other and further relief as to this Honorable Court may seem meet and proper in the premises.

STATE OF ARKANSAS,
By ~~WILLIAM~~ B. APPLEGATE,
H.W. *Its Attorney General.*
DANIEL N. KIRBY,
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